IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1057 OF 2006
IN
SUIT NO.974 OF 1983

Gagan N. Sainani ....Plaintiff
V/s.
New India Assurance Co. Ltd. & Anr. ....Defendants

Mr.R.B. Jaiswal for the Plaintiff.
Mr.K.J. Presswala i/b Mulla & Mulla & C. B. & Co. for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 20TH NOVEMBER, 2006.

P.C. :

1. By an order dated 2.3.2006, the Plaintiff was granted two weeks time to file affidavit of evidence subject to payment of costs. The Plaintiff was prosecuting an Appeal and S.L.P. in the Supreme Court in the same matter. The S.L.P. was finally disposed of on 31.3.2006.

2. It is true that pendency of the S.L.P. did not prevent the Plaintiff from filing an affidavit of evidence. Probably being under a mistaken notion that he could file the affidavit of evidence after the disposal of the S.L.P the Plaintiff prepared the same in April, 2006. However, by then the time stipulated

in the order dated 2.3.2006 had expired.

3. In these circumstances, I do not consider non-compliance of the order dated 2.3.2006 deliberate or even totally negligent. It is pertinent to note that the Defendant itself has filed the written statement after twenty two years.

4. In the circumstances, affidavit of evidence is taken on record.